

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

City of Emmetsburg
Wastewater Facility No. 74-28-0-02

**ADMINISTRATIVE
CONSENT ORDER
NO. 2012-WW- 02**

TO: Donald J. Hemphill
P.O. Box 1475
Spencer, Iowa 51301-1475

I. SUMMARY

This administrative consent order (order) is entered into between the City of Emmetsburg (City) and the Iowa Department of Natural Resources (Department). The City agrees to comply with the effluent limits contained in its National Pollution Discharge Elimination System (NPDES) permit and to pay a penalty of \$1,500.00. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Sheila Kenny, Environmental Specialist
IDNR Field Office #3

1900 N Grand Gateway North Suite E 17
Spencer, IA 51301-2200

Relating to legal requirements:

Carrie Schoenebaum, Attorney at Law
Iowa Department of Natural Resources
Henry A Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section

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455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties

III. STATEMENT OF FACTS

The parties hereby agree to the following statement of facts.

1. The City discharges wastewater pursuant to NPDES Permit No. 74-28-0-02 issued to the City March 30, 2009. Its NPDES permit contains effluent limitations for the discharge of various pollutants one of which is Ammonia Nitrogen. The Wastewater Treatment Facility consists of a collection system with 7 lift stations and a rotating biological contactor treatment plant. The treatment plant is located in Section 36 of Emmetsburg Township at T96N, R33W, Palo Alto County, Iowa and discharges to an unnamed drainage ditch to the East Fork of the Des Moines River. The City has a population of 3867 people and treats domestic and industrial waste. This facility has had significant violations of the ammonia limit since the issuance of its NPDES permit.
2. In 2008, Blue Water Truck Wash (Blue Water) established in the City, this truck wash contributed effluent to the City's Waste Water Treatment Facility.
3. In 2009 the City reported violations in its monthly operation reports (MORs) of the effluent limit for Ammonia Nitrogen during the months of April, May, June, July, August and September. The City was sent a Notice of Violation (NOV) for these violations on August 6, 2009, September 1, 2009 and November 23, 2009. The City contends that the violations were due to the Blue Water.
4. On October 16, 2009, the City informed the Department that it met with a representative from Blue Water on September 25, 2009. At that meeting the City required that Blue Water provide it a written report outlining the steps it would take to bring its effluent into compliance or the City would disconnect it from its sanitary sewer.
5. On December 7, 2009, the Department received a letter from the City in response to the November NOV. This letter indicated that the City had not received the requested information from Blue Water.
6. In 2010 the City reported violations in its MORs of the effluent limit for Ammonia Nitrogen during the months of March, April, June, August and September. The City was sent a NOV for these violations on April 30, 2010.
7. On May 1, 2010, the City sent a letter to the Department in response to the April NOV indicating that it had sent a notice to Blue Water that the City intended to disconnect the industry from the City's sanitary sewer in 15 days. On May 27, 2010, the Department received a letter from the City indicating that it would be seeking the professional opinion of an environmental engineer prior to disconnecting Blue Water.

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8. On October 25, 2010, the Department received a copy of a draft treatment agreement that the City proposed to Blue Water in an effort to regulate its discharge. On December 8, 2010, the City informed the Department that Blue Water would not sign the proposed treatment agreement.

9. On December 16, 2010, the Department conducted a wastewater inspection of the City's Wastewater Treatment Facility. During this inspection the Department documented continued ammonia violations and that the City had not reached a resolution with Blue Water. The City retained outside legal counsel to represent the City in its dealings with Blue Water.

10. On January 31, 2011, the City was sent a copy of the wastewater inspection and a notice that the matter was being referred to the Department's Legal Services Bureau for possible enforcement.

11. On February 8, 2011, the City filed a petition in District Court seeking to enjoin further effluent discharges from Blue Water in violation of City ordinances.

12. In July 2011, the City and Blue Water signed and filed a stipulation in the pending District Court action which required a reduction in the strength and volume of effluent discharge by Blue Water.

13. In 2011 the City reported a violation of the effluent limit for Ammonia Nitrogen during the month of August.

14. By November, 2011, Blue Water had closed and ceased discharging effluent to the City's Wastewater Treatment Facility.

CONCLUSIONS OF LAW

The parties agree that the following conclusions of law are applicable to this matter.

1. Iowa Code section 455B.186 prohibits the discharge of pollutants into waters of the state, except for adequately treated pollutants discharged pursuant to a permit. The above stated facts demonstrate non-compliance with this provision.

2. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission (Commission) to promulgate rules relating to the operation of waste disposal systems. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. Subrule 64.7 specifies the conditions that are to be included in a permit, including applicable effluent limitations in chapters 61 and 62 of the rules. The

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effluent limits contained in the City's permit were violated. The above stated facts demonstrate non-compliance with these provisions.

V. ORDER

THEREFORE, the Department orders and the City agrees to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. The City shall comply with its NPDES permit.
2. The City shall pay a penalty in the amount of \$1,500.00. \$375.00 of the penalty shall be paid to the DNR within 30 days of the date the Director signs this administrative consent order. In lieu of payment of the remaining \$1,125.00, the City shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Palo Alto County Conservation Board. The City shall make a payment of \$1,125.00 to the Palo Alto County Conservation Board within 30 days of the date the Director signs this administrative consent order. Once the payment is made, the City shall submit a receipt of payment to Carrie Schoenebaum, attorney for the Department.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with penalties.

2. **Economic Benefit:** At this time the Department has decided not to assess a penalty for this factor.

3. **Gravity of the Violation:** The City has continuously failed to comply with the effluent limits contained in its NPDES permit. Effluent limits are the core of an NPDES permit and the backbone of the regulatory program. The limits have been established to ensure that environmental degradation will not occur. The failure by the City to comply with its limits has resulted in a substantial release of pollutants to a water of the state. In

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addition, one of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute in this case. The Department has determined that the most effective and efficient means of addressing the above cited violations is with administrative penalties, which are lower than those that could be obtained through court action. Therefore, \$1,000.00 is assessed for this factor.

4. **Culpability:** The City has reported continuous violations of the effluent limits contained in its NPDES permit since it was issued its permit. The City is the party that must ensure the wastewater it accepts from domestic and industrial sources is adequately treated prior to discharge. The City failed to take timely and substantial action to achieve compliance. Therefore, it is apparent that the City did not apply the appropriate standard of care required by the law. For these reasons, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175 and 561 IAC chapter 7, as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This order is entered into knowingly by and with the consent of the City. By signature to this order, all rights to appeal this order are waived.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191. Compliance with provision "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order.

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Paul Sefton
Chairman, Emmetsburg Municipal Utilities

Dated this 14th day of
February, 2012.

Attest: Gina Kappa
Board Secretary

Roger L. Lande
Roger L. Lande, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 20th day of
February, 2012.

City of Emmetsburg-Wastewater Facility No. 74-28-0-02, Field Office 3, Carrie
Schoenebaum; Sheila Kenny, I B 2.c.